

1 **MICHAEL N. FEUER**, City Attorney (SBN 111529x)
2 **THOMAS H. PETERS**, Chief Assistant City Attorney (SBN 163388)
3 **CORY M. BRENT**, Supervising Assistant City Attorney (SBN 115453)
4 **ELIZABETH T. FITZGERALD**, Deputy City Attorney (SBN 158917)
200 N. Main Street; 6th Floor, City Hall East
Los Angeles, CA 90012
Email: Elizabeth.fitzgerald@lacity.org
5 Phone No.: (213) 978-7560, Fax No.: (213) 978-8785

6 *Attorneys for Defendant* **CITY OF LOS ANGELES, CHARLIE BECK AND**
7 **SERGEANT KINNEY**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 **DARREN “PETE” WHITE**

12 **Plaintiff,**

13
14 **vs.**

15 **CITY OF LOS ANGELES; CHIEF**
16 **CHARLIE BECK, in his official**
17 **capacity; SERGEANT KINNEY and**
18 **and DOES 1 through 10,**

19 **Defendants.**

CASE NO.: CV17-03306 SJ0-MRWx
(Hon. S. James Otero)

MOTION IN LIMINE NO. 2:

DEFENDANTS’ OPPOSITION TO
PLAINTIFF’S MOTION IN LIMINE ;
TO EXCLUDE EVIDENCE OF
PLAINTIFF’S AND HIS
ORGANIZATION’S PAST LAW-
SUITS

Trial Date: August 21, 2018
Time: 9:00 a.m.
Courtroom: 10C

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23 **TO THIS HONORABLE COURT AND TO PLAINTIFF AND HIS**
24 **ATTORNEYS OF RECORD:**

25 **Defendants CITY OF LOS ANGELES, CHIEF CHARLIE BECK, and**
26 **SERGEANT EDWARD KINNEY hereby oppose Plaintiff’s Motion in Limine**
27 **No. 2 to exclude evidence of Plaintiff and his organization’s past lawsuits.**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS OF THE CASE

On June 14, 2016, Los Angeles Police Department Sergeant Edward Kinney was assigned to the Resources Enhancement Service Enforcement Team (RESET), as the unit Assistant Officer in Charge. The City of Los Angeles, in response to a May 2012 Notice of Violation by the Los Angeles County Health Department and in order to create and maintain a safer, cleaner environment for the general public has tasked the L.A. Sanitation Watershed Protection Division, Environmental Enforcement and Emergency Response Unit with systematic clearing of the Skid Row area. Approximately every two months, for a seven day period, specific streets in the Skid Row area are designated for comprehensive cleaning. In order to accomplish this mission, notices from L.A. Sanitation are posted 48 hours in advance in the scheduled cleaning area. The posted notices inform the homeless population of the sanitation efforts, affording them ample time to remove their belongings, tents, encampments and bulky items, prior to the street closures. Entities from the Watershed and Clean Harbors utilize power washers and chemicals to accomplish the cleaning, to rid the area of harmful infectious materials and biohazardous waste that accumulates in the streets and sidewalks due to the overwhelming homeless population. Also, to provide protection to the city and contract workers from interference and physical assault, as they do their jobs.

RESET units were assigned to help facilitate the street closures, along with two units from Department of Transportation, to ensure there was no traffic on the road and no pedestrian traffic on the sidewalks. The hard closure was posted for 6th Street from Wall to Gladys. The street closure was complete with posted officers and yellow tape (Los Angeles Police Department Police Line Do Not Cross) was strung on 6th Street from Wall to Julian. No vehicle or pedestrian traffic was allowed to flow eastbound and all vehicle and pedestrian traffic was

1 disallowed through the intersection at San Julian. Due to the chemicals utilized in
2 the cleaning and the health hazards such as needles, sharps and biohazardous
3 materials and human feces that remain after the homeless persons in the area
4 depart the location, citizens are not permitted to be present during the cleaning.

5 At 6:15 a.m., officers issued warnings to the transients in the area along 6th
6 Street, advising them of the imminent closure. The hard closure began at 8:00 am.
7 The City vehicles, dump trucks and equipment utilized by Street Services were
8 pulling onto the street in preparation for the clean up. An individual refused to
9 remove his make-shift lodging from the sidewalk designated for cleaning. The
10 individual refused to exit his lodging and comply with officers in violation of
11 41.18(a)(1) LAMC, resisting/obstructing officers. After 6th Street and the Sn
12 Julian intersection were blocked off and the Police Line tape were affixed to block
13 pedestrian traffic, a field supervisor and several units were redeployed from the
14 mission, to affect the arrest of this individual. A tactical plan was formulated to
15 the arrest of the individual who refused to leave his make-shift lodging. His
16 lodging was located on the south curb, mid-block between San Julian and Wall.

17 At approximately 8:20 a.m., Sergeant Kinney observed Darren "Pete"
18 White, cross over the Police Line Tape and pass the crosswalk into the
19 intersection at 6th and San Julian.

20 White was ordered to get back behind the yellow tape before officers
21 responded with units to deal with the individual who would not leave his make-
22 shift shelter. Sergeant Kinney advised White that he would be arrested if he did
23 not comply.

24 After the delay and distraction caused by White, Sergeant Ramirez and
25 several designated officers responded to the lodging of the individual who refused
26 to leave. After continuing to comply, the individual was placed under arrest after
27 a short standoff, resulting in a use of force due to him resisting arrest. He was
28 then arrested.

1 Suspect White was observed a third and fourth time, walking out into the
2 street, across the yellow tape to film the arrest of the homeless man who refused to
3 leave his make-shift shelter. Other persons observing White's disregard of the
4 yellow tape, began crossing the street. This created a potentially dangerous
5 situation for the officers and the public by diverting and delaying the police efforts
6 to apprehend and arrest the man who refused to leave his tent on the sidewalk.

7 Once that man on the sidewalk was taken into custody and while Sergeant
8 Ramirez and the officers were still in the process of controlling the scene,
9 Sergeant Kinney walked over to San Julian and warned the two individuals who
10 had crossed back behind the yellow tape, telling them that if they crossed again
11 they would be arrested. Sergeant Kinney advised these two persons that they were
12 free to film whatever they wished, but they could not cross the Police Line.

13 Sergeant Kinney had given White multiple warnings, including several
14 given from a distance, while attempting to deal with the homeless individual who
15 refused to leave his tent. Officer attention was diverted multiple times due to
16 White's actions, delaying officer efforts to deal with an uncooperative suspect in a
17 tent who refused to exit. Sergeant Kinney observed White pushing thru the
18 yellow tape, stretching it approximately eight feet into the intersection, defeating
19 the purpose of the tape. Due to all of White's actions, Sergeant Kinney walked
20 over to White and asked him for his identification. Kinney advised White that he
21 was going to be placed under arrest. Kinney walked back to the area where the
22 man in the tent was being arrested, and once that scene was under control, he
23 directed officers to arrest White under arrest for 148(a)(1) Penal Code, for
24 obstructing and delaying officers during the course of their duties.

25 White, however, contends that he was arrested for exercising his First
26 Amendment rights.

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1 **II. FAIRNESS DICTATES THAT DEFENDANTS SHOULD BE**
 2 **ALLOWED TO MENTION PLAINTIFF'S PRIOR LAWSUITS**
 3 **AGAINST THE LOS ANGELES POLICE DEPARTMENT**

4 Plaintiff's First Amended Complaint alleges that "The LAPD has
 5 repeatedly interfered with Plaintiff's right to film and photograph members of the
 6 LAPD in public places." (Para. 3). Plaintiff also alleges that "The LAPD has a
 7 policy, custom and practice of interfering with members of the public when they
 8 are engaged in the protected First Amendment activity of filming or
 9 photographing public policy activity." (Para. 4). Additionally, Plaintiff alleges
 10 that "the City has failed to develop adequate and lawful policies and to inform
 11 and train its personnel on this issue." (Para. 4) These allegations by Plaintiff are
 12 not based in reality. LAPD is filmed every single day by private citizens and this
 13 has been the case for years. LAPD operates in a society where everyone has a
 14 cell phone and everyone is able to film police at any time. LAPD films itself as
 15 well – there are in-car video recorders in police vehicles, and a substantial
 16 number of LAPD officers wear body-cam recorders. LAPD is trained that
 17 citizens are allowed to film them. Indeed, LA CAN, Pete White's organization,
 18 follows LAPD regularly and films them. They are allowed to do so under the
 19 First Amendment, and LAPD does not stop them, or any other individual who
 20 films the police.

21 Twice Pete White has testified in Federal Court trials where his
 22 organization and its members have alleged that LAPD violated the First
 23 Amendment by preventing videotaping of the police. Twice Pete White and his
 24 organization have lost. These losses are relevant and should be able to be
 25 mentioned to the jury if Plaintiff claims that LAPD has a policy of violating
 26 citizens' First Amendment rights who videotape the police or if he seeks to allege
 27 that LAPD repeatedly violates his First Amendment rights by preventing him
 28 from videotaping the police.

1 **III. CONCLUSION**

2 In light of the forgoing argument, Defendants respectfully request
3 this Honorable Court deny Plaintiff's Motion in Limine No. 2.

4 Dated: July 30, 2018

5 Respectfully submitted,

6 **MICHAEL N. FEUER**, City Attorney
7 **THOMAS H. PETERS**, Chief Assistant City Attorney
8 **CORY M. BRENT**, Supervising Assist. City Attorney

9 By: /s/Elizabeth T. Fitzgerald
10 **ELIZABETH T. FITZGERALD**,
11 Deputy City Attorney

12 *Attorneys for Defendant* **CITY OF LOS ANGELES,**
13 **CHIEF CHARLIE BECK and SERGEANT EDWARD**
14 **KINNEY**

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